F. M. S. REPORTS

[APPELLATE CRIMINAL JURISDICTION
MURRAY-AYNSLEY, J.
March 29, 1939.

WILSON v. PUBLIC PROSECUTOR

[PERAK MAGISTRATE'S CRIMINAL APPEAL
No. 9 of 1937]

Road Traffic Enactment (No. 17 of 1937) Sec. 25 (ii)—negligent driving—motor vehicle running off road—presumption of negligence—defence attributing accident to a 'skid'—whether presumption rebutted.

The appellant was charged under section 25 (ii) of the Road Traffic Enactment with driving a motor car on a road in a negligent manner by causing the car to run off the road. He was convicted and sentenced to a fine of $25/- and costs, or in default two weeks rigorous imprisonment. It was also ordered that his license be endorsed under Section 25 (3) of the Enactment. The prosecution could only prove that the vehicle had left the road and fallen into a ravine. The appellant who was the only person present at the time of the accident attributed it to a skid. The learned Magistrate on the evidence found that the marks shown on the road were those of the appellant's vehicle and came to the conclusion that the appellant was guilty of negligence. The appellant based his appeal on the following grounds, among others:—that the learned magistrate was wrong in admitting in evidence (1) a report made by the appellant (2) a sketch plan and (3) four photographs taken of the scene of the accident all of which documents were tendered by a witness for the prosecution. It was submitted on behalf of the appellant that this evidence was inadmissible because neither the person who received the report nor the person who took the photographs was called to testify as to its or their authenticity; because it had not been shown that the sketch plan was made by a person competent to make it. The appellate Judge accepted none of these contentions.

Held, that once the Magistrate is satisfied upon the materials before him that a case of negligence has been made out and that the accused has not produced evidence to rebut the presumption of negligence, an appellate Court ought not to interfere with his decision which is based on a finding of fact.

Held, further, that it was, in the present case, unnecessary to decide whether skidding might not, at the present time, itself be evidence of negligence.

MAGISTRATE'S CRIMINAL APPEAL.

The facts sufficiently appear from the headnote above.

Huntsman for the Appellant.

Brodie, Deputy Public Prosecutor, for the Respondent.

Cur. Ad. Vult.

MURRAY-AYNSLEY, J.—In this case the Appellant was driving a motor vehicle which left the road and fell into a ravine. There were no witnesses to the accident except the Appellant himself.

In the Magistrate's Court the Police could only show that the vehicle had left the road and produced evidence of marks, and asked the Court to infer that these were made by the vehicle in question. In these circumstances can the prosecution be said to have proved that the Appellant was guilty of negligent driving? The English cases (such as *Ellor* v. *Selfridge*, 46 T.L.R. 236) establish the proposition that where a motor vehicle leaves a road without explanation that fact is evidence of negligence, but they also indicate that where it is proved that a "skid" takes place the presumption of negligence no longer holds good (*Wing* v. *London General Omnibus Co.*, 1909, 2 K.B. 652).

In the present case the Appellant who was the only person present at the time of the accident alleged that it was due to a skid.

The highway appears to have been of reasonable width and with a good surface.

It appears to me once there was material on which the Court could find that there was negligence, that is a question of fact whether the Appellant had produced evidence to rebut this presumption. The Magistrate had before him the evidence of wheel marks, which he was entitled to assume were those of Appellant's vehicle and the evidence of Appellant himself. On this I think he was entitled to arrive at the conclusion that the Appellant was guilty of negligence.

I do not pass an opinion as to whether at the present time skidding may not be evidence of negligence.

I do not think that any of the other points raised even if they have any foundation would justify my interfering with the conviction.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]
MURRAY-AYNSLEY, J.
March 29, 1939.

INDUT BIN ISHAK v. PUBLIC PROSECUTOR

[PERAK MAGISTRATE'S CRIMINAL APPEAL
No. 25 of 1939]

Criminal Procedure Code (Cap. 6) S. 68 (b); Penal Code (Cap. 45) S. 411; Minor Offences Enactment (Cap. 46) S. 35—security for good behaviour from persons suspected of having no ostensible means of subsistence—dishonestly retaining stolen property—fraudulent possession of property—trial of proceedings under Criminal Procedure Code taken before those for substantive offences—irregularity.

Three separate charges (1) of having no ostensible means of subsistence (Section 68 (b) the Criminal Procedure Code) (2) of dishonestly retaining stolen property